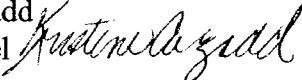


Memorandum

To: Honorable Judy Chu, Ph.D., Chair
Honorable Betty T. Yee, Vice Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: March 6, 2008

From: Kristine Cazadd
Chief Counsel 

Subject: **State Assessee Property Tax Appeals: Approval of 2008 Procedures
March 19, 2008 Board Meeting – Chief Counsel Matters – Item L3**

This memorandum discusses certain procedures utilized in state assessee¹ appeal petitions decided in 2007 (2007 Procedures), requests approval of the corresponding procedures for petitions to be decided in 2008 under the newly adopted Rules for Tax Appeals (2008 Procedures), and provides options for the Board's consideration.²

Summary of Procedures and Options for Board Direction

1. Authority

The 2007 Procedures were governed by the former Board of Equalization Rules of Practice (ROP), which were repealed effective February 6, 2008,³ and Board staff's letter to state assesses and interested parties dated September 14, 2007.⁴ The 2008 Procedures are governed by the newly adopted Rules for Tax Appeals (RTA), which were effective February 6, 2008,⁵ and Board direction consistent with the RTA.

¹ The terms "state assesses" and "petitioners" refer to both state assesses and persons who file appeals of the Private Railroad Car Tax, unless otherwise noted. The term "state assessee petitions" includes petitions for reassessment of unitary and nonunitary values and escape or excessive assessments (including petitions for abatement of penalty), petitions for correction of assessment allocation, and petitions for reassessment of private railroad car values.

² The Board is required to finally determine the value of state assesses' unitary and non-unitary property on a calendar-year basis. (Rev. & Tax. Code, § 744.) Thus, the 2008 Procedures would be implemented beginning with the state assessee appeals petitions that must be filed no later than July 20, 2008 (unitary value) and September 20 (nonunitary value) unless an extension is granted.

³ The former ROP were found in division 2 of title 18 of the California Code of Regulations.

⁴ Available on the Board's Web site at <http://www.boe.ca.gov/proptaxes/pdf/stateassesseeappealprocedures.pdf>.

⁵ The new RTA are located in division 2.1 of title 18 of the California Code of Regulations.

2. Requesting an Appeals Conference

Under both the 2007 Procedures and section 5326.4, subdivision (a) of the RTA, an appeals conference will be held if requested by any of the following:

- Petitioner
- State-Assessed Properties Division
- Assistant Chief Counsel of the Appeals Division
- Any Board Member

In 2007, no appeals conferences were requested by the Appeals Division. Beginning 2008, the Appeals Division will promptly review petitions where an appeals conference has not been requested and will request that one be held if the Appeals Division determines that it would fulfill the objective of an appeals conference, which is to “facilitate a more efficient and productive oral hearing or other Board action on the petition.” (Cal. Code Regs., tit. 18, § 5326.4, subd. (c).)

Options: Because any Board Member can request an appeals conference for any particular petition, the Board as a whole has the authority to require that an appeals conference be held for any category of petitions (e.g., petitions that request an oral hearing (as was required for 2006 petitions); petitions involving a particular industry group; or petitions that raise specified issues).

3. Role of Tax and Fee Programs Division of the Board’s Legal Department

a. Preparation of the State-Assessed Properties Division (SAPD) Analysis

Under both the 2007 Procedures and section 5311, subdivision (b)(16) of the RTA, the SAPD Analysis is a written summary that sets forth an analysis of all of the issues raised in the petition and contains SAPD’s recommendation on the petition, and under the 2007 Procedures and section 5326, subdivision (b) of the RTA, is the SAPD’s written response to a petition. The SAPD Analysis, the petition, and the petitioner’s optional response to the SAPD Analysis are reviewed by the Appeals Division⁶ and distributed to the Board for consideration.

In 2006, the Tax and Fee Programs Division (TFP) worked with SAPD to prepare each SAPD Analysis. If an appeals conference was scheduled, the SAPD Analysis was submitted no later than 30 days prior to the date of the conference. If no appeals conference was scheduled, the SAPD Analysis was submitted no later than 30 days prior to the meeting at which Board action on the petition was scheduled.

⁶ However, if the petitioner and SAPD reach agreement on all issues before the Appeals Division becomes involved in the petition, the Appeals Division does not review the petition. (Cal. Code Regs., tit. 18, § 5325.4.)

By direction of the Board at the April 25, 2007 meeting, each 2007 SAPD Analysis was prepared by SAPD, without any significant TFP involvement. The 2007 Procedures and the RTA were modified to shorten the submission deadlines for the SAPD Analysis,⁷ giving the Appeals Division more time than in 2006 to consider the parties' submissions.

However, under section 5326.2, subdivision (d) of the RTA, the Chief Counsel has the authority to extend the time for submitting an SAPD Analysis when no appeals conference is scheduled, "upon a showing of reasonable cause." Under section 5326.6, subdivision (a), the Appeals Division has "broad discretion in determining the briefing schedules" where an appeals conference is scheduled.

Options: Under the RTA, there is no specific requirement and therefore there is broad discretion regarding the preparation of the SAPD Analysis. However, section 5311, subdivision (b)(14) of the RTA describes the role of TFP as "representing" SAPD in responding to state assessee petitions. Therefore, the Board has the option of directing that TFP take greater responsibility for the SAPD Analysis in 2008, as was the case in 2006. If the Board so directs that TFP take greater responsibility in preparing the SAPD Analysis, then the Chief Counsel (in cases where no appeals conference is scheduled) and the Appeals Division (where an appeals conference is scheduled) may adjust the submission deadlines to allow SAPD and TFP sufficient time to jointly prepare the SAPD Analyses.

b. Attendance at an Appeals Conference

Attendance of parties at an appeals conference is discussed in section 5326.4, subdivision (g) of the RTA, which provides that SAPD "will be represented by an appraiser" at an appeals conference, and does not mention TFP attorneys or any other persons or entities in connection with SAPD's attendance. This provision of the then-draft RTA was revised at the direction of the Board at the April 25, 2007 meeting to remove a prior reference to TFP serving as a representative for SAPD at appeals conferences. Consistent with this direction – and contrary to the case in 2006 where TFP actively participated in the appeals conferences – no TFP attorney attended any appeals conference in 2007.

In this regard, the language of section 5326.4, subdivision (g), clearly requires SAPD appraisers to attend the appeals conferences, but does not on its face require nor prohibit TFP attorneys from attending as well, in the course of representing their client, SAPD. As indicated above, the RTA defines TFP as SAPD's "representative" in responding to state assessee petitions.

Options: The Board could give specific direction to staff as to whether, or under what circumstances, TFP attorneys should attend appeals conferences together with the SAPD appraiser. If the Board decides that TFP attorneys should attend and participate in some or all

⁷ Where no appeals conference is scheduled, section 5326.2, subdivision (a) of the RTA requires that the SAPD Analysis be submitted to the Board Proceedings Division no later than 45 days prior to the date on which the petition is scheduled for Board action. Where an appeals conference is scheduled, section 5326.6, subdivision (b) of the RTA requires that the SAPD Analysis be submitted to the Board Proceedings Division no later than 35 days before the scheduled conference date.

appeals conferences, then the Board should consider whether a future rule amendment more clearly stating TFP's role would be necessary or appropriate.

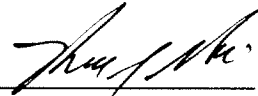
4. Contents of a Hearing Summary

For each state assessee petition that is scheduled to come before the Board as an oral hearing, the Appeals Division prepares a Hearing Summary that summarizes the facts, contentions, law and evidence in a manner that is intended to assist the Board in its consideration of the petition. For 2006 petitions, the Hearing Summaries contained the above information, and the Appeals Division's analysis, comments, and questions for the parties to address at the hearings, but generally did not provide the Appeals Division's conclusions or recommendations. Under the 2007 Procedures and section 5311, subdivision (b)(5) of the RTA, Hearing Summaries also contained the "conclusions and recommendations of the Appeals Division after applying the relevant law to all of the relevant information."

Options: Since the definition of a Hearing Summary under the RTA includes the conclusions and recommendations of the Appeals Division, in our view the Board could give specific direction as to the type or category of conclusion to be addressed in such conclusions and recommendations. If, however, the Board wishes to direct the Appeals Division to omit conclusions and recommendations from the Hearing Summaries entirely, a rule amendment would be the appropriate remedy.

If you have any questions please contact Lou Ambrose, Tax Counsel IV, at (916) 445-5580.

Approved: _____


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